



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

GREGORY D. STUMBO
ATTORNEY GENERAL

August 22, 2007

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Ms. Beth O'Donnell, Executive Dir.
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

RECEIVED

AUG 22 2007

PUBLIC SERVICE
COMMISSION

Re: Surcharge Interim Options

Dear Ms. O'Donnell:

In an informal conference held on August 16, 2007, the Kentucky Public Service Commission ["the Commission"] took comment on the Franklin Circuit Court's August 1st Order and Opinion for the purpose of assessing the impact thereof on the utility regulatory process. The Office of the Attorney General asks that you accept this letter as its comments regarding both interim and long-term implications of Judge Shepherd's Opinion and Order.

First, the Attorney General applauds the Commission for its willingness to work with interested stakeholders to initiate new legislation to address this issue. Indeed, the Attorney General began to undertake this endeavor on August 9th, by contacting utility companies with the invitation for meetings to do same. Accordingly, we would welcome the opportunity to serve on any joint task force in this regard.

Second, the Attorney General agrees with the Commission's General Counsel, who in his comments prefatory to the informal hearing held in this matter on August 16, 2007, stated that Judge Shepherd's ruling found that the Commission, "... lacks the authority to review a utility's costs on an interim basis, and the Commission cannot allow a surcharge without specific statutory authority."

The General Counsel further noted that the Commission has filed a joint notice of appeal of the ruling together with Duke Energy of Kentucky ("DEK")¹, and that during the pendency of the appeal, the decision is stayed as to DEK and the Commission. The General Counsel further noted, however, that the ruling carried implications considerably broader than just that portion of the ruling dealing with the Accelerated Mains Replacement Program ["AMRP"].

Further in his prefatory comments, the Commission's General Counsel outlined three (3) potential courses of action the Commission could pursue in light of the Judge's ruling.

¹ F/k/a Union Light, Heat and Power Co. ["ULHP"].



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The Office of the Attorney General believes that Judge Shepherd's Order and Opinion reached the correct result by striking down ULHP's AMRP. It is the position of the Office of the Attorney General that the Commission should follow the second course of action or option, that of adhering to the strict language of the Opinion and Order and thus suspend consideration of any other non-statutory surcharges.

As the Commonwealth's chief law enforcement officer, the Attorney General could never himself adopt, nor advise an agency of the Commonwealth to adopt a position in willful derogation of a lawful court order. Such a position would cause him to violate his duties under the Kentucky Constitution. The Attorney General believes Judge Shepherd's ruling is quite clear, and wholly lawful. As such, his ruling has full force and effect unless or until the Commonwealth's appellate courts reverse, remand or modify the ruling.

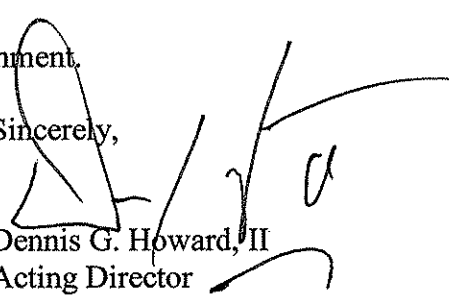
Furthermore, the Attorney General agrees with the position Judge Shepherd set forth in his ruling, that the Commission lacks inherent authority to review a utility's costs outside of a base rate case, and thus the Commission cannot allow surcharges absent express statutory authority. Obviously, the Attorney General could not adopt a position during the pendency of the instant appeal which could be interpreted as a waiver of the positions he adopted both in the case below, and in many prior non-statutory surcharge-related cases.

For the foregoing reasons, the Attorney General encourages the Commission to adhere to the strict language of the Opinion and Order and thus suspend consideration of any non-statutory surcharges.

In the interim, the Attorney General looks forward to addressing this issue with all stakeholders through legislation. The Attorney General believes that if all interested parties are willing to come together in a spirit of cooperation to constructively address the issues, viable long-term solutions can be forged to protect the mutual interests of Kentucky utilities and their ratepayers. By so doing, potential detrimental rate ramifications may be avoided.

Thank you for this opportunity to provide comment.

Sincerely,



Dennis G. Howard, II
Acting Director
Office of Rate Intervention